In the High Court of Judicature at Madras

Dated:22.03.2002

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Revision Petition No.1018 of 2001 and C.M.P.No.5529 of 2001

Rajendran Gnanaolivu rep. By
by Power Agent Veinu Gnanavolivu. .. Petitioner

vs.

1.Sundar Gnanaolivu (Given up)
2.M.V. Sundharavadhanam .. Respondents

Revision Petition filed under Article 227 of the
Constitution of India against the order dated 31.01.2001 made in
E.A.No.3919 of 2000 in E.P.No.151 of 2000 on the file of IXth Assistant
Judge, City Civil Court, Chennai.
! For petitioners : Mr. R. Srinivas

^ For 2nd respondent: Mr. M.L. Ramesh

: ORDER

The decree holder in O.S.No.7414 of 1996 on the file of
IXth Assistant Judge, City Civil Court, Chennai is the petitioner in the
above revision filed under Article 227 of the Constitution of India.

2. The petitioner filed the said suit against the first
respondent herein initially on the file of Original Side of this Court.
The suit was filed for declaration of title and recovery of possession
concerning the Flat No.1-D, Marble Arch, No.4 and 5, Bishop Wallace
Avenue (East), Mylapore, Chennai 600 004. The said suit was filed in the
year 1991 and the same was numbered as C.S.No.653 of 1991 and it was
transferred to the City Civil Court and re-numbered as O.S.No.7414 of
1996 on the file of the Second Additional Judge, City Civil Court,
Chennai. The first respondent herein contested the suit and the same was
decreed after full trial on 02.08.1999. After the decree, the petitioner
filed the execution petition in E.P.No.151 of 2000 on the file of IXth
Assistant Judge, City Civil Court, Chennai. Notice was ordered in the
Execution Petition and finally the first respondent herein was set
ex-parte on 08.07.2000 and delivery of possession was ordered. When the
bailiff went to the suit property, first respondent's people locked the
doors and prevented the execution. Therefore, the petitioner filed two
Execution Applications in the above Execution Petition for brake open the

lock and police aid respectively. The second respondent at that point of time filed E.A.No.3919 of 2000 in the above Execution Petition under Section 1 51 of the Code of Civil Procedure, seeking to record him as an Obstructor in the proceedings. The case of the second respondent is that he became a tenant in the suit property in January, 1999. He was inducted into the suit property by one Rukmani, has said to be a Power Tenant Agent of the first respondent. The second respondent has alleged that there is a rental agreement in his favour. The petitioner herein filed a counter opposing the said application. The said petition is also barred by the provisions of Order 21 of the Code of Civil Procedure as in accordance with Rule 102 of the said order a transferee pendente lite of the suit property from the judgment debtor is not entitled to be heard as

an Obstructor. The Court below by the impugned order dated 31.01.2001 , allowed E.A.No.3919 of 2000. Against the said order, the petitioner preferred the present revision.

3. Heard Mr. R. Srinivas for the petitioner and Mr. M.L. Ramesh for the second respondent.

4. Learned counsel for the petitioner after taking me through the relevant provisions, namely Order 21 Rule 97, Rule 102 of the Code of Civil Procedure would contend that the court below failed to note that E.A.No.3919 of 2000 was barred by Order 21 Rule 102 of the Code of Civil Procedure. He further contended that the Executing Court failed to see that the second respondent herein was claiming to be only a tenant (transferee) from the first respondent herein and that the person who had become the tenant during the pendency of a suit, namely, O.S.No.7414 of 1996 could not be heard at all in execution proceedings as an Obstructor.

5. On the other hand, learned counsel for the second respondent supporting the order under challenge would contend that, inasmuch as he was in possession of the suit property at the time of decree, rightly recognised him as an obstructor, accordingly prayed for dismissal of the revision.

6. I have carefully considered the rival submissions.

7. It is seen that the Civil Suit in O.S.No.7414 of 1996 filed by the petitioner was decreed on 02.08.1999. Based on the said decree, he filed E.P.No.151 of 2000 for execution of the same. The judgment debtor second respondent herein on receipt of notice did not participate in the execution proceedings, therefore he was set ex-parte on 08.07.2000. Accordingly, the Court below passed an order for delivery of possession in terms of the decree. When the Court bailiff went to the premises in question for handing over possession, the same was objected to by the second respondent herein stating that he is a statutory tenant. In order to substantiate his claim, E.A.No.3919 of 20 00 was filed before the Court below to recognise him as an Obstructor.

8. Now, I shall consider the relevant provisions applicable to the issue in question. Order 21 Rule 97 (1) and (2) reads as under.

" 97. Resistance or obstruction to possession of immovable property.-

1. Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance of obstruction.

2. Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provision herein contained. "

Order 21 Rule 102 states thus,

" 102. Rules not applicable to transferee pendente lite.-

Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person. "

9. Mr. R. Srinivas, learned counsel for the petitioner would contend that, in the light of the fact that the Obstructor being a tenant is also bound by the decree in O.S.No.7414 of 1996 dated 02.08.1999, his claim need not be considered or adjudicated by the Executing Court. For that, he very much relied on Rule 102, which says that procedure prescribed under Rule 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed. In this regard, it is relevant to note that the petitioner herein plaintiff secured a decree against the first respondent herein judgment debtor in O.S.No.7414 of 1996 on 02.08.1999. Since the first respondent herein - Judgment Debtor was out of the country, he executed a Power in favour of Rukmani Ammal on 17.01.1998 giving full power to deal with the property in question. It is the case of the Obstructor that from the said Rukmani Ammal he entered into an agreement of tenancy on 18.01.1999 and occupied the house. In other words, even prior to the date of the decree dated 02.08.1999, the second respondent Obstructor entered into an agreement and was in possession of the suit property as a tenant on 18.01.1999 with the power of attorney holder Rukmani Ammal. In such a circumstance, in the light of the language used in Sub-clause (1) of Rule 97, I am of the view that the second respondent herein is justified in filing E.A.No.3919 of 200 0 before the Executing Court to establish that he is an obstructor. This aspect has been rightly considered by the Court below and allowed the said application.

10. Learned counsel for the petitioner very much relied on the decision of M.Srinivasan,J., (as he then was) in the case of Annapoorni vs. Janaki reported in 1995 (1) Law Weekly 141. The said judgment concentrates only on the power of this Court under Section 115

of the Code of Civil Procedure and Article 227 of the Constitution of India. He also relied on the decision of S.S. Subramani,J., in the case of Arthur Theodore James (deceased) and 2 others vs. Mrs. Hanna Rosaline and 4 others reported in 1999 (1) L.W. 222. In the said decision the learned Judge has observed that,

" 14. ..... The so-called lease in favour of Savarinathan was entered into pending suit for partition and, therefore, he is also bound by the decree. He cannot have a better claim than the so-called lessor. If Savarinathan has put up any construction pending litigation, he is bound to remove the same. Merely, because the decree does not provide for removal of the structure, the power of the executing Court and the decree will not become inexecutable. "

11. Learned counsel for the petitioner has also relied on the decision of the Apex Court in the case of N.S.S. Narayana Sarma vs. M/s. Goldstone Exports (P) Ltd., reported in A.I.R. 2002 S.C. 251. While considering Rule 97, their Lordships have held,

" 16..... The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because of the resister raised it. The questions which the executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties. e. g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during executing proceedings. "

It is to be noted that, in the very same judgment their Lordships have further held,

" 16. ..... In the adjudication process envisaged in Order 21 Rule 97 (2) of the Code, the execution Court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be result of the adjudication contemplated in the sub-section."

It is clear that it is for the Executing Court to decide the question raised by the resister or obstructor. In our case, the claim made by the obstructor had been considered by the Executing Court. In the light of the conclusion of the Supreme Court, the decision referred to in 1999 (1) L.W. 222 (cited supra) is not helpful to the petitioner's case.

12. It is useful to refer the judgment of the Supreme Court reported in the case of Shreenath vs. Rajesh reported in A.I.R. 1998 S.C. 18 27. This judgment was referred to by the Executing Court in support of its conclusion. After considering Sub-clause (1) of Rule 97, their Lordships have held that,

13. ... all disputes relating to the property made

under Rules 97 and 99 is to be adjudicated under Rule 101, while under unamended provision under sub-clause (2) of Rule 97, the executing Court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98, the Court puts back a decree-holder in possession where the Court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the Court has to dismiss the decree-holder application. Thus even prior to 1976 right of any person claiming right on his own or as a tenant, not party to the suit such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property, on his own, if resists delivery of possession to the decree-holder the dispute and his claim has to be decided after 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the Executing Court itself finally under Rule 101. ....."
It is clear that even prior to 1976 and after the said amendment, the person claiming right as a tenant in respect of the property in question need not file a separate suit and he is entitled to file an application in the Executing Court to prove his claim. As stated earlier, the second respondent herein rightly filed an application and the same was considered by the Executing Court.

13. It is also relevant to refer the case of Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and another reported in 1997 (3) S.C.C. 694 , wherein their Lordships have held that, the resistance and / or obstruction to possession of immovable property as contemplated by Order 21, Rule 97 CPC could have been offered by any person. The words " any person" as contemplated by Order 21, Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would be, therefore, be total strangers to the decree. In that case, the respondent one though seeking only reissuance of warrant for delivery of possession with aid of armed force, in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot and their Lordships in such a circumstance have held,
" Thus it was squarely covered by the sweep of Order 21, Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by subrule (2) thereof had to be followed by the Executing Court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order."

14. In the case of Bhagwat vs. Kasturi reported in A.I.R. 1974 Madhya Pradesh 26, the Division Bench has held that as soon as the third person resists or obstructs delivery of possession, the

Executing Court must stay its hands, until the decree holder either satisfies it that such a person is bound by the decree, or makes an application under Order 21, Rule 97, complying resistance or obstruction. The third person can give intimation in writing to the Execution Court of his intention to resist or obstruct after or even before a warrant of possession is issued.

15. In the case of Bhanwar Lal vs. Satyanarain and another reported in J.T. 1994 (6) S.C. 626, the following conclusion of their Lordships is relevant.
" 4. .... A reading of Order 21 Rule 97 CPC clearly envisages that "any person" even including the judgment debtor irrespective whether he claim derivative title from the judgment debtor or set up his own right title or interest de horse the j ebtor and he resists execution of a decree, then the court in addition to the power under Rule 35 (3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. "

16. In the case of Shreenath vs. Rajesh reported in 1998 A.I.R. S. C.W. 1619, the Supreme Court has held that the third party in possession of a property claiming independent right as a tenant not a party to the decree for possession of immovable property under execution, could resist such decree by seeking adjudication of his objections under Order 21 Rule 97.

17. In the light of the legal position as well as the procedure prescribed in the Code and also of the fact that the second respondent - Obstructor became a tenant even prior to the date of the decree, I hold that his application in E.A.No.3919 of 2000 to declare him as an Obstructor is valid and the Executing Court is fully justified in adjudicating the matter. Accordingly, I do not find any error or infirmity in the order impugned. Consequently, the civil revision petition fails and the same is dismissed. No costs.

18. In view of the dismissal of the main revision, connected CMP., is also dismissed.
Index:Yes/I
kh
22.03.2002
P. Sathasivam,J.,

To
The Ixth Assistant Judge
City Civi Court
Chennai.

Pre-delivery Order in
C.R.P.No.1018 of 2001

Dated:22.03.2002